

1                   BELLSOUTH TELECOMMUNICATIONS, INC.  
2                   SUPPLEMENTAL DIRECT TESTIMONY OF ERIC FOGLE  
3                   BEFORE THE TENNESSEE REGULATORY AUTHORITY  
4                   DOCKET NO 04-00046  
5                   OCTOBER 29, 2004  
6

7    Q.    PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH  
8           TELECOMMUNICATIONS, INC ("BELLSOUTH"), AND YOUR  
9           BUSINESS ADDRESS.

10

11   A.    My name is Eric Fogle I am employed by BellSouth Resources, Inc.,  
12           as a Director in BellSouth's Interconnection Operations Organization.  
13           My business address is 675 West Peachtree Street, Atlanta, Georgia  
14           30375.

15

16   Q.    PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR  
17           BACKGROUND AND EXPERIENCE.

18

19   A.    I attended the University of Missouri in Columbia, where I earned a  
20           Master of Science in Electrical Engineering Degree in 1993 and Emory  
21           University in Atlanta, where I earned a Master of Business  
22           Administration degree in 1996. After graduation from the University of  
23           Missouri in Columbia, I began employment with AT&T as a Network  
24           Engineer, and joined BellSouth in early 1998 as a Business  
25           Development Analyst in the Product Commercialization Unit From July

1           2000 through May 2003, I led the Wholesale Broadband Marketing  
2           group within BellSouth. I assumed my current position in June 2003.  
3           First, as a Business Analyst, and then as the Director of the Wholesale  
4           Broadband Marketing Group and continuing in my current position, I  
5           have been, and continue to be, actively involved in the evolution and  
6           growth of BellSouth's network including provisions for accommodating  
7           Digital Subscriber Line ("DSL") based services as well as the underlying  
8           technology.

9  
10       Q.    HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS  
11           PROCEEDING?

12  
13       A.    Yes. I filed Direct Testimony on June 25, 2004.

14  
15       Q.    WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL DIRECT  
16           TESTIMONY?

17  
18       A.    On July 15, 2004, the Parties filed a Joint Motion for Abeyance with the  
19           Tennessee Regulatory Authority ("Authority") where the Parties asked  
20           for 90 day abatement of the arbitration proceeding so that they could  
21           include and address issues relating to *United States Telecom Ass'n v*  
22           FCC, 359 F.3d 554 (D.C. Circuit 2004) ("*USTA II*") in this proceeding.  
23           During the 90 day abatement, the parties continued to negotiate, and as  
24           a result, several of the issues addressed in my June 25, 2004 Direct  
25           Testimony have been resolved. The purpose of my Supplemental

1 Direct Testimony is to restate BellSouth's position for Issues: 36 (2-18),  
2 37 (2-19), 38 (2-20), and 46 (2-28)

3

4 ***Item 36; Issue 2-18: (A) How should line conditioning be defined in the***  
5 ***Agreement? (B) What should BellSouth's obligations be with respect to***  
6 ***Line Conditioning? (Attachment 2, Section 2.12.1)***

7

8 Q. SUBPART (A) OF ITEM 36 ASKS THE QUESTION "HOW SHOULD  
9 LINE CONDITIONING BE DEFINED IN THE AGREEMENT?" WHAT  
10 IS BELL SOUTH'S POSITION WITH RESPECT TO ITEM 36A?

11

12 A. BellSouth accepts the FCC's definition of line conditioning, which is a  
13 routine network modification that BellSouth regularly undertakes to  
14 provide xDSL services to its own customers. BellSouth's position is  
15 entirely consistent with Paragraph 643 of the TRO which provides:  
16 "Line conditioning is properly seen as a routine network modification  
17 that incumbent LECs regularly perform in order to provide xDSL  
18 services to their own customers. As noted above, incumbent LECs  
19 must make the routine adjustments to unbundled loops to deliver  
20 services at parity with how incumbent LECs provision such facilities for  
21 themselves." BellSouth's proposed language further states that line  
22 conditioning may include the removal of any device from a copper loop  
23 or copper sub-loop that may diminish the capability of the loop or sub-  
24 loop to deliver high-speed switched wireline telecommunications  
25 capability, including xDSL service. Such devices include, but are not

1 limited to, load coils, excessive bridged taps, low pass filters, and range  
2 extenders. BellSouth has proposed this additional language simply  
3 because it routinely removes similar devices from its network in the  
4 process of provisioning its own DSL services, and therefore, falls within  
5 the FCC's definition of line conditioning.

6

7 Q. CAN YOU BRIEFLY DESCRIBE BRIDGED TAPS AND LOAD COILS  
8 THAT ARE USED TO PROVIDE OR IMPROVE VOICE SERVICE, BUT  
9 CAN IMPAIR HIGH SPEED DATA SERVICES LIKE XDSL?

10

11 A Yes. Bridged tap is an engineering technique of extending or tapping a  
12 single loop so that it could serve additional customer locations (though  
13 the bridged loop may serve only a single one of those customer  
14 locations at a given time) and adds flexibility as service arrangements  
15 and customer needs change over time. This creates additional  
16 flexibility, and increases the efficiency of the BellSouth network. Load  
17 coils and low pass filters are inductive devices that improve voice  
18 quality, especially on long loops, by reducing high frequency noise  
19 (heard by the end-user as static). The same inductor that reduces high  
20 frequency noise also interferes with high frequency data signals, like  
21 those used for xDSL service.

22

23 Q. DOES THE FCC SUPPORT BELL SOUTH'S POSITION?

24

25 A. Yes. The FCC clearly defines a "routine network modification" in

1 paragraph 632 of the TRO. Specifically, the TRO states: "By 'routine  
2 network modifications' we mean that incumbent LECs must perform  
3 those activities that incumbent LECs regularly undertake for their own  
4 customers " BellSouth's position and proposed language clearly state  
5 that BellSouth will perform line conditioning functions that it regularly  
6 undertakes for its own xDSL customers, or additional non-FCC required  
7 line conditioning functions in limited situations where the CLECs and  
8 BellSouth have reached agreement in the industry collaboratives.  
9 Thus, BellSouth's language is entirely consistent with the FCC's ruling  
10 in the TRO on this issue, and in some situations exceeds its  
11 requirements for line conditioning set out in the TRO.

12

13 Q. WHY IS BELL SOUTH CONCERNED WITH THE JOINT  
14 PETITIONERS' PROPOSED LANGUAGE?

15

16 A. The Joint Petitioners' proposed language creates an obligation for  
17 BellSouth to perform specific line conditioning functions that BellSouth  
18 does not regularly undertake for its own customers. Such an obligation  
19 would lead to the development of a superior network for the Joint  
20 Petitioners and is clearly not required by the FCC's definition of line  
21 conditioning. Even though the FCC has clearly and unequivocally  
22 stated otherwise, the Joint Petitioners have previously stated in  
23 arbitration testimony filed in both Alabama and North Carolina that "Line  
24 Conditioning is not limited to those functions that qualify as Routine  
25 Network Modifications." It is impossible to square this position with the

1 FCC statement that "line conditioning is properly seen as a routine  
2 network modification that incumbent LECs regularly perform in order to  
3 provide xDSL services to their own customers."  
4

5 Q SUBPART (B) OF THIS ISSUE ASKS THE QUESTION "WHAT  
6 SHOULD BELLSOUTH'S OBLIGATIONS BE WITH RESPECT TO  
7 LINE CONDITIONING?" WHAT IS BELLSOUTH'S POSITION ON  
8 ITEM 36 SUBPART (B)?  
9

10 A. As stated above, BellSouth should perform line conditioning functions  
11 as defined in 47 C.F.R. 51.319(a)(1)(iii) to the extent the function is a  
12 routine network modification that BellSouth regularly undertakes to  
13 provide xDSL to its own customers  
14

15 ***Item 37; Issue 2-19: Should the Agreement contain specific provisions***  
16 ***limiting the availability of load coil removal to copper loops of 18,000 feet***  
17 ***or less? (Attachment 2, Section 2.12.2)***  
18

19 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?  
20

21 A. As stated above, it is BellSouth's position that it will perform the same  
22 line conditioning function for Competitive Local Exchange Carriers  
23 ("CLECs") that it performs for its own customers. BellSouth adheres to  
24 current industry technical standards that require the placement of load  
25 coils on copper loops greater than 18,000 feet in length to support voice

1 service. Furthermore, BellSouth does not remove load coils for  
2 BellSouth's retail end users served by copper loops of over 18,000 feet  
3 in length. Therefore, such a modification would not constitute a routine  
4 network modification and is not required by the FCC. Even though not  
5 required under the FCC's definition of line conditioning, upon a CLEC's  
6 request, BellSouth will remove load coils on loops and subloops that  
7 are greater than 18,000 feet in length at rates pursuant to BellSouth's  
8 Special Construction Process contained in BellSouth's FCC Tariff No.  
9 2.

10

11 Q. DOES ANY FCC ORDER PROVIDE BELL SOUTH WITH A BASIS TO  
12 TREAT LINE CONDITIONING IN DIFFERENT MANNERS  
13 DEPENDING ON THE LENGTH OF THE LOOP?

14

15 A. Yes. The FCC's rules clearly state that BellSouth must perform line  
16 conditioning for CLECs as it does for its own retail customers.  
17 Therefore, BellSouth's current procedures for treating its retail  
18 customers determine the basis for line conditioning for CLECs,  
19 including the Joint Petitioners. For its retail voice service customers,  
20 BellSouth adds or does not add load coils depending on the length of  
21 the copper loop. BellSouth's current procedures for the removal of load  
22 coils for its own xDSL customers is detailed above, and these  
23 procedures have been offered in a consistent manner to the CLECs.

24

25

1    **Item 38; Issue 2-20: Under what rates, terms and conditions should**  
2    **BellSouth be required to perform Line Conditioning to remove bridged**  
3    **taps? (Attachment 2, Sections 2.12.3 & 2.12.4)**  
4

5    Q.    WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?  
6

7    A.    BellSouth's offer to the CLECs exceeds its FCC requirements for line  
8           conditioning. Even though BellSouth does not routinely remove any  
9           bridged taps for its own customers, it has discussed, negotiated, and  
10          agreed in the CLEC industry collaborative to remove a limited number  
11          of bridged taps at the request of CLECs. The following bridged tap  
12          removal process was developed and agreed to in the CLEC industry  
13          collaborative;

14

15               1) Any copper loop being ordered by a CLEC that has over 6,000  
16               feet of combined bridged tap will be modified, upon request from  
17               the CLEC, so that the loop will have a maximum of 6,000 feet of  
18               bridged tap. This modification will be performed at no additional  
19               charge to the CLEC.

20               2) Line conditioning orders that require the removal of bridged tap  
21               (serving no network design purpose) on a copper loop that will  
22               result in a combined level of bridged tap between 2,500 and  
23               6,000 feet will be performed at the rates set forth in Exhibit A of  
24               Attachment 2 of the Interconnection Agreement.

25               3) The CLEC may request removal of any unnecessary and non-



1 excessive bridged tap (bridged tap between 0 and 2,500 feet that  
2 serves no network design purpose) at rates pursuant to  
3 BellSouth's Special Construction Process contained in  
4 BellSouth's FCC Tariff No. 2.

5

6 Even though BellSouth is only required to perform line conditioning that  
7 it performs for its own xDSL customers and is not required to create a  
8 superior network for CLECs, it has agreed with the CLECs who  
9 participate in the industry collaborative to offer some limited bridged tap  
10 removal that exceeds what BellSouth does for itself. It is for this  
11 reason, that requests for line conditioning beyond what BellSouth  
12 performs for its own customers, or is willing to voluntarily provide to the  
13 CLECs, are not appropriately dealt with under a Section 251 arbitration.  
14 Such negotiations between the parties should be pursuant to a  
15 separate agreement

16

17 Q. DO YOU AGREE WITH THE JOINT PETITIONERS' ASSERTION  
18 THAT REMOVAL OF BRIDGED TAPS IS INCLUDED IN THE  
19 DEFINITION OF LINE CONDITIONING?

20

21 A. No. Because BellSouth does not routinely remove bridged taps for its  
22 own xDSL customers, such activity does not fall within the FCC's  
23 definition of line conditioning, and is therefore not required by the TRO.

24

25

1 **Item 46; Issue 2-28: (A) In cases in which a CLEC purchases UNEs from**  
2 **BellSouth, should BellSouth be required to provide DSL transport or DSL**  
3 **services (of any kind) to CLEC and its End Users? (B) If so, what rates,**  
4 **terms and conditions should apply? (C) To the extent the obligation to**  
5 **provide DSL does not arise pursuant to § 251 of the Act, and BellSouth is**  
6 **willing to offer such services pursuant to a separate agreement or tariff,**  
7 **should the obligations of the Parties be included in agreement?**  
8 **(Attachment 2, Section 3.10.4)**

9

10 Q. SHOULD ISSUE 46 (AND ALL SUBPARTS) BE INCLUDED IN THIS  
11 ARBITRATION PROCEEDING?

12

13 A No. The FCC has stated on several occasions that incumbent LECs  
14 are not obligated to provide CLECs with DSL transport or DSL services  
15 over UNEs. Moreover, after a three (3) day evidentiary hearing in the  
16 DeltaCom arbitration, the Authority ruled in a manner consistent with  
17 federal law on the DSL over UNE-P issue. There is no basis for the  
18 Authority to change course and reverse itself on this issue. BellSouth's  
19 position is that the Authority does not have jurisdiction to grant the relief  
20 requested by the Joint Petitioners. If the Authority were to order  
21 BellSouth to alter certain practices concerning its FastAccess® Internet  
22 service and also to set rates, terms, and conditions for BellSouth's  
23 FastAccess service, the Authority would effectively be ordering  
24 BellSouth to either violate or alter the express terms of BellSouth's  
25 federal tariff. The Authority clearly has no authority over FCC tariffs,

1 and thus, lacks the jurisdiction to grant the relief the Joint Petitioners  
2 are seeking.

3  
4 Because FastAccess is unregulated and wholesale DSL service is an  
5 interstate telecommunications service over which the FCC, and not the  
6 Authority, has jurisdiction, granting the Joint Petitioners request  
7 exceeds the Authority's jurisdiction. In its TRO, the FCC unanimously  
8 rejected the CLECs' efforts to compel the ILECs into providing  
9 broadband service to CLEC UNE voice customers. Also, in an order  
10 addressing GTE's DSL-Solutions-ADSL Service, the FCC found that  
11 "this offering, which permits Internet Service Providers (ISPs) to provide  
12 their end user customers with high-speed access to the Internet, is *an*  
13 *interstate service and is properly tarified at the federal level.*"<sup>1</sup>

14  
15 The FCC addressed BellSouth's practice of not providing its federally  
16 tarified wholesale DSL service over a combined unbundled loop and  
17 unbundled switch port (that is, the so-called "UNE-P") in its order  
18 approving BellSouth's Louisiana/Georgia Section 271 application.<sup>2</sup>  
19 Parties to that proceeding raised complaints about BellSouth's DSL  
20 policy that are nearly identical to those asserted in this proceeding,  
21 which the FCC rejected

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<sup>1</sup> See Memorandum Opinion and Order, *In the Matter of GTE Telephone Operating Cos GTOC Tariff No. 1*, 13 F.C.C. rcd 22,466 at ¶1 (October 30, 1998) (emphasis added).

<sup>2</sup> FCC Order No. 02-247, *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and Bellsouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, Rel. May 15, 2002 ("GA/LA 271 Order")

1 BellSouth states that its policy "not to offer its wholesale DSL  
2 service to an ISP or other network services provider [ ] on a line  
3 that is provided by a competitor via the UNE-P" is not  
4 discriminatory nor contrary to the Commission's rules  
5 Commenters allege that BellSouth will not offer its DSL service  
6 over a competitive LEC's UNE-P voice service on that same line.  
7 We reject these claims because, under our rules, the incumbent  
8 LEC has no obligation to provide DSL service over the  
9 competitive LEC's leased facilities. Furthermore, a UNE-P  
10 carrier has the right to engage in line splitting on its loop. As a  
11 result, a UNE-P carrier can compete with BellSouth's combined  
12 voice and data offering on the same loop by providing the  
13 customer with line splitting voice and data service over the UNE-  
14 P loop in the same manner. Accordingly, we cannot agree with  
15 commenters that BellSouth's policy is discriminatory  
16

17 Id. at ¶157 (emphasis added). The FCC, therefore, was squarely  
18 presented with the issue of whether BellSouth's policy of not providing  
19 its federally tariffed, wholesale DSL service over UNE-P violates federal  
20 law. The FCC found no such violation. On the contrary, the FCC  
21 explicitly and unequivocally found that BellSouth's policy is not  
22 discriminatory and does not violate federal law. A contrary ruling by this  
23 Authority under state law would be inconsistent with the requirements of  
24 federal law, as interpreted by the FCC.  
25

26 Q HAS THE FCC ADDRESSED BELL SOUTH'S DSL POLICY IN OTHER  
27 DECISIONS?

28  
29 A Yes. The FCC again affirmed its conclusion reached in the  
30 Georgia/Louisiana Order when it approved BellSouth's 271 Application  
31 for Alabama, Kentucky, Mississippi, North Carolina, and South

1 Carolina. In paragraph 164 of its order, the FCC concluded:

2  
3 Finally, we reject claims by KMC and NuVox that BellSouth's  
4 practice of refusing to provide DSL service on the same line over  
5 which an end user subscribes to a competitive LEC's voice  
6 service warrants a finding of noncompliance. As we stated in the  
7 BellSouth Georgia/Louisiana Order, an incumbent LEC has no  
8 obligation, under our rules, to provide DSL service over the  
9 competitive LEC's leased facilities. Moreover, a UNE-P carrier  
10 has the right to engage in line splitting on its loop. As a result, a  
11 UNE-P carrier can compete with BellSouth's combined voice and  
12 data offering on the same loop by providing the customer with  
13 line splitting voice and data service over the UNE-P loop in the  
14 same manner. Accordingly, we cannot agree with KMC and  
15 NuVox that BellSouth's policies are discriminatory and warrant a  
16 finding of checklist noncompliance [Footnotes omitted]

17 Again, it is clear that BellSouth's DSL policy is neither anticompetitive  
18 nor discriminatory. Further, as the FCC noted, CLECs have the option  
19 of engaging in line splitting in order to provide DSL service to their voice  
20 customers -- an option that Joint Petitioners have conveniently elected  
21 to forego, despite prior representations by some CLECs that line  
22 splitting is essential to competition.

23  
24 It is not necessary for an end-user customer to purchase voice service  
25 from BellSouth in order to receive DSL service, whether FastAccess  
26 from BellSouth or another DSL service from an ISP purchasing  
27 BellSouth's federally tariffed wholesale DSL transport service. This is  
28 because BellSouth will provide DSL service over a line that is being  
29 resold by a CLEC, because a resold line is a "BellSouth provided  
30 exchange line facility" within the meaning of BellSouth's FCC Tariff  
31 No 1. Thus, if a CLEC wants to provide both voice and DSL service to

1 an end user over a single line, one option is for the CLEC to resell  
2 BellSouth's voice service with BellSouth-provided DSL service over the  
3 same line.

4  
5 When a BellSouth voice customer migrates to a CLEC for voice service  
6 via an individual unbundled loop or via UNE-P, BellSouth will not  
7 continue to provide DSL service to that customer. To do so would  
8 violate BellSouth's FCC Tariff No. 1, since an unbundled loop leased to  
9 a CLEC, either on a stand-alone basis or as part of a UNE-P  
10 arrangement, is not an "in-service, Telephone Company [i.e., BellSouth]  
11 provided exchange line facility." F.C.C. Tariff No. 1, Section 28.2.1 (A).

12  
13 The FCC repeated its conclusion in the Tennessee/Florida 271 Order,  
14 rejecting claims that BellSouth's DSL over UNE-P policy was contrary to  
15 the public interest.<sup>3</sup>

16  
17 Q. WHY DOES BELL SOUTH DISCONTINUE DSL SERVICE TO A  
18 CUSTOMER WHO MIGRATES TO A CLEC UTILIZING UNE-P FOR  
19 VOICE SERVICE?

20  
21 A. Although there are a number of reasons that justify BellSouth's DSL  
22 policy, I will focus on two. First, as explained above, discontinuing DSL

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<sup>3</sup> See 17 FCC Rcd at 17683, Para. 164; see also Memorandum Opinion and Order, Application by BellSouth Corporation, et al., for Authorization to Provide In-region, Inter-LATA Services in Florida and Tennessee, 17 FCC Rcd 17595 (2002) and 17 FCC Rcd at 25922, para. 178.

1 service to a customer who migrates voice service to a CLEC utilizing  
2 UNE-P is consistent with the terms and conditions of BellSouth DSL  
3 service as set forth in BellSouth's FCC Tariff No 1. Requiring  
4 BellSouth to provide DSL service over the high-frequency portion of an  
5 unbundled loop leased by a CLEC would necessitate a change to  
6 BellSouth's FCC tariff.

7  
8 Second, once a CLEC purchases an unbundled loop (or the UNE-P)  
9 from BellSouth, the CLEC has control over the entire loop, including the  
10 high-frequency portion of the loop. BellSouth has no right to use that  
11 loop for any purpose. Ordering BellSouth to provide a service over a  
12 facility controlled by a CLEC in order to provide a competitive service to  
13 that CLEC's customers that the CLEC could offer itself would be the  
14 imposition of a very unusual affirmative obligation on BellSouth to assist  
15 a competitor. While the Telecommunications Act of 1996 ("1996 Act")  
16 imposes certain affirmative obligations on BellSouth to assist  
17 competitors, this simply is not one of them. Furthermore, to the extent  
18 BellSouth were required to provide DSL service over the high-frequency  
19 portion of an unbundled loop leased by a CLEC, BellSouth would have  
20 to negotiate with each CLEC the rates, terms, and conditions for  
21 provisioning this service. This would be no small task, given that there  
22 are numerous CLECs currently operating in Tennessee, which only  
23 adds to the complexity (not to mention time and expense) of the relief  
24 the Joint Petitioners are seeking  
25

1 Q SUBPART (A) OF THIS ISSUE ASKS THE QUESTION "IN CASES IN  
2 WHICH A CLEC PURCHASES UNES FROM BELL SOUTH, SHOULD  
3 BELL SOUTH BE REQUIRED TO PROVIDE DSL TRANSPORT OR  
4 DSL SERVICES (OF ANY KIND) TO CLEC AND ITS END USERS?"  
5 WHAT IS BELL SOUTH'S POSITION ON ITEM 46A?

6  
7 A. BellSouth should not be required to provide DSL transport or DSL  
8 services over UNEs to a CLEC and its end users because BellSouth's  
9 Digital Subscriber Line Access Multiplexers ("DSLAMs") are not subject  
10 to unbundling. The FCC specifically stated in paragraph 288 of the  
11 Triennial Review Order that it would "not require incumbent LECs to  
12 provide unbundled access to any electronics or other equipment used  
13 to transmit packetized information". A DSLAM is precisely the type of  
14 equipment to which the FCC referred  
15  
16 Further, the FCC addressed this issue in its Line Sharing Order <sup>4</sup> and  
17 concluded that incumbent carriers are not required to provide line  
18 sharing to requesting carriers that are purchasing UNE-P combinations.  
19 The FCC reiterated this determination in its Line Sharing  
20 Reconsideration Order <sup>5</sup>. It stated: "We deny, however, AT&T's request  
21 that the Commission clarify that incumbent LECs must continue to

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<sup>4</sup> *In Re Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order No. FCC 99-355 in CC Docket Nos. 98-147, 96-98 (Released December 9, 1999) (*Line Sharing Order*)

<sup>5</sup> *Third Report and Order on Reconsideration* in CC Docket No. 98-147 and *Fourth Report and Order on Reconsideration* in CC Docket No. 96-98, Order No. FCC 01-26 (Released January 19, 2001) (*Line Sharing Reconsideration Order*)



1 provide xDSL service in the event customers choose to obtain service  
2 from a competing carrier on the same line because we find that the Line  
3 Sharing order contained no such requirement.” ¶ 26. The FCC then  
4 expressly stated that the Line Sharing Order “does not require that  
5 [LECs] provide xDSL service when they are not [sic] longer the voice  
6 provider.” ¶ 26. The FCC explained: “We note that in the event that the  
7 customer terminates its incumbent LEC provided voice service, for  
8 whatever reason, the competitive data LEC is required to purchase the  
9 full stand-alone loop network element if it wishes to continue providing  
10 xDSL service.” (Line Sharing Order, at ¶ 72).

11  
12 BellSouth is asking the Authority to reach the same conclusion as it  
13 reached in the DeltaCom arbitration, which is consistent with FCC  
14 rulings. Specifically, BellSouth is asking the Authority to find that  
15 BellSouth is not required to provide its DSL transport or DSL services  
16 (of any kind) to a CLEC and its end users.

17  
18 Q. IS THERE ANY OTHER REASON THAT THE AUTHORITY SHOULD  
19 NOT GRANT THE CLECS’ REQUEST ON ISSUE 46?

20  
21 Yes, BellSouth has filed an emergency petition with the FCC to  
22 specifically address this issue because of adverse and inconsistent  
23 rulings in other states, and to provide a single answer that will be  
24 consistently applied to all nine states that comprise BellSouth’s service  
25 territory In response to this emergency petition, all current proceedings

1 in others states, including appeals, are being held in abeyance awaiting  
2 the outcome of the FCC's ruling. The pleading cycle has been  
3 completed, and the matter is now pending at the FCC. Again, there is  
4 no basis for the Authority to reverse its decision in the DeltaCom  
5 arbitration. This is particularly the case when the FCC is reviewing the  
6 same issue.

7  
8 Q. SUBPART (B) OF THIS ISSUE ASKS THE QUESTION "IF SO, WHAT  
9 RATES, TERMS, AND CONDITIONS SHOULD APPLY?" WHAT IS  
10 BELLSOUTH'S POSITION ON ITEM 46B?

11  
12 A. Issue 46(b) in this arbitration does not apply in states that have ruled  
13 that ILECs cannot be compelled to provide DSL to the CLECs' UNE  
14 voice customers.

15  
16 Q. SUBPART (C) OF THIS ISSUE ASKS THE QUESTION "TO THE  
17 EXTENT THE OBLIGATION TO PROVIDE DSL DOES NOT ARISE  
18 PURSUANT TO § 251 OF THE ACT, AND BELLSOUTH IS WILLING  
19 TO OFFER SUCH SERVICES PURSUANT TO A SEPARATE  
20 AGREEMENT OR TARIFF, SHOULD THE OBLIGATIONS OF THE  
21 PARTIES BE INCLUDED IN AGREEMENT?" WHAT IS  
22 BELLSOUTH'S POSITION ON ITEM 46C?

23  
24 A. Issue 46(c) in this arbitration does not apply in states that have ruled  
25 that ILECs cannot be compelled to provide DSL to the CLECs' UNE

1 voice customers.

2

3 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

4

5 A. Yes